

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEROY SUMMERS,

Plaintiff,

Civil Case No. 15-10550
Honorable Linda V. Parker

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

/

OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE'S JUNE 2, 2016 REPORT AND RECOMMENDATION (ECF NO. 15); (2) GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (ECF NO. 12); (3) DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT(ECF NO. 14); AND (4) REMANDING FOR FURTHER PROCEEDINGS

On February 2, 2015, Plaintiff filed this lawsuit challenging the Commissioner of Social Security's ("Commissioner's") final decision denying Plaintiff's application for disability and disability insurance benefits under the Social Security Act. (ECF No. 1.) On February 13, 2015, this Court referred the matter to Magistrate Judge Anthony P. Patti for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. §636(b)(1)(A) and/or a report and recommendation ("R&R") on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 4.) The parties subsequently filed cross-motions for summary judgment. (ECF No. 12,14.) On

June 2, 2016, Magistrate Judge Patti issued his R&R recommending that this Court grant Plaintiff's motion, deny the Commissioner's motion, and remand the matter pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings. (ECF No. 15.)

In his R&R, Magistrate Judge Patti – having reviewed the motions, the administrative record, the Code of Federal Regulations, and the relevant case law – concluded that Plaintiff was denied a full and fair hearing before an unbiased Administrative Law Judge (ALJ). (ECF No. 15 at Pg. ID 593.) Specifically, Magistrate Judge Patti found that Plaintiff overcame the presumption of impartiality by providing convincing evidence that a risk of actual bias or pre-judgment is present. (*Id.* citing *Fluker v. Comm'r of Soc. Sec.*, No. 12-10612, 2013 WL 1122447, at *4 (E.D. Mich. Mar. 18, 2013).) Magistrate Judge Patti therefore concludes that the matter must be remanded to the Commissioner, including a de novo hearing and opinion by a different ALJ. (ECF No. 15 at Pg. ID 600.)

At the conclusion of the R&R, Magistrate Judge Patti advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at Pg ID 601.) He further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right to appeal.” (*Id.*, citing *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of*

Health and Human Servs., 932 F.2d 505 (6th Cir. 1991).) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Patti. The Court therefore adopts Magistrate Judge Patti's June 2, 2016 R&R.

Accordingly,

IT IS ORDERED, that Plaintiff's motion for summary judgment is **GRANTED**;

IT IS FURTHER ORDERED, that Defendant's motion for summary judgment is **DENIED**;

IT IS FURTHER ORDERED, that this matter is **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with the R&R, including a de novo hearing before, and opinion by, a different Administrative Law Judge.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: July 13, 2016

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, July 13, 2016, by electronic and/or U.S. First Class mail.

s/ Kelly Winslow for Richard Loury
Case Manager